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November 28, 2006

Hand Delivered

General Counsel's Office
Federal Election Commission
999 E Street, N W
Washington, D C 20463

Re: MUR 5874; Response of Gun Owners of America, Inc to Complaint

Dear Sirs.

This firm represents Gun Owners of America, Inc. in the above-referenced matter. By letter dated Wednesday, November 8, 2006, and received by our client on Monday, November 13, 2006, you notified our client that the Federal Election Commission ("FEC") had received a complaint indicating that Gun Owners of America, Inc. may have violated the Federal Election Campaign Act of 1971, as amended ("FECA"), and you invited our client's response within 15 days of the receipt of your letter.

Enclosed is the Statement of Designation of Counsel, signed by Lawrence D Pratt as Executive Director of Gun Owners of America, Inc, designating the undersigned as counsel in this matter, in accordance with your instructions

Please be advised that our clients wish this matter to remain confidential, in accordance with 2 U.S.C. sections 437g(a)(4)(B) and 437g(a)(12)(A)

The Complaint

This matter was instituted following the filing of a letter of complaint against Gun Owners of America, Inc ("GOA") dated November 1, 2006, from Christopher F. Carr of Brady Campaign to Prevent Gun Violence, of Washington, D.C

According to the complaint, GOA issued on its Internet website home page certain "action alerts" that "referr[ed]" recipients to GOA's "voter guide" (also on GOA's Internet website home page), alleging that these items, together, violated the Federal Election Campaign Act ("FECA") and related regulations of the Federal Election Commission ("FEC") The complaint specifically alleges: (1) that GOA engaged in express advocacy because its action alert (hereinafter "E-Mail Alert") "contains words urging action with

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respect to candidates associated with a particular issue' as discussed on page 31 of the FEC's Campaign Guide for Corporations and Labor Organizations", and (11) "that the publicizing of the voter guide. . constitutes either an independent expenditure or an in-kind contribution to those candidates listed "

GOA E-Mail Alert and Voter Guide

On Thursday, November 2, 2006, GOA issued an E-Mail Alert to GOA subscribers "to keep gun owners **informed** about who is protecting your right in the Congress " (Emphasis added) This e-mail alert was issued as part of a regular series of e-mails in an ongoing educational effort designed to keep GOA members and subscribers informed with respect to development involving Second Amendment issues, including bills and other actions of Congress that affect gun owners' rights

The November 2, 2006 e-mail alert was designed to "help[] **inform** pro-gun voters throughout the country." (Emphasis added.) To that end, it referred recipients to GOA's Voter Guide as a "valuable resource to help you on Election Day." The Voters Guide, in turn, provided "ratings" information to those persons who chose to access it, educating them on the records of the candidates

Compliance with FEC Regulations

Our client confirms that, at all pertinent times, it was a corporation maintaining a website accessible on the Internet and, on its website — accessible by members of the public without a password — a section entitled "Alerts" as well as a section entitled "2006 Voter's Guide" setting forth information with respect to candidates for federal office in all 50 states. The Voter Guide was developed consistent with the standards set forth in 11 C.F.R. § 114.4(c)(5), which provides that "[a] corporation ... may prepare and distribute to the general public voter guides consisting of two or more candidates' position on campaign issues "

There is nothing in either GOA's E-Mail Alerts or in its Voter Guide that "expressly advocate[s] the election or defeat of any one or more clearly identified candidate(s) or candidates of any clearly identified political party," as the term "expressly advocate[s]" is used in 11 C.F.R. Section 114.4(5)(i).

First, none of the specific words set out in 11 C.F.R. Section 100.22(a) appears in either the E-Mail Alert or the Voter Guide.

Second, neither do they contain any words or phrases that, in context, "can have **no other reasonable meaning** than to urge the election or defeat of one or more of clearly identified candidates." *Id* (emphasis added) Rather, the words, in context, may reasonably be interpreted at most as an effort to inform the public concerning the identified candidates'

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positions on gun issues. Moreover, even in reference to the proximity of the November 7, 2006, election, the Voter Guide, coupled with the E-Mail Alert, **cannot** “only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates,” as required by 11 C.F.R. Section 100.22(b) (emphasis added). Instead, although it is possible that “reasonable minds could differ,” the Voter Guide clearly merely informs as to the gun issues positions of the candidates for election to the Senate and the House and does not advocate a vote for or against any candidate. See 11 C.F.R. Section 100.22(b)(2). Furthermore, although the E-Mail Alert may be interpreted to mean that GOA is concerned that people cast a fully informed vote as they go to the polls on November 7, that does not constitute express advocacy. See 11 C.F.R. Section 100.22(b)(1). *A fortiori*, GOA’s e-mail alerts, which merely refer readers to the GOA website, cannot reasonably be considered independent expenditures or in-kind contributions.

In sum, according to the statute and FEC regulations, neither the E-Mail Alert nor the Voter Guide contained either words of “explicit words of advocacy of election or defeat” or, in context, contained words that could only be construed as explicit words of advocacy of election or defeat, but instead served as an educational guide on the positions of the candidates with respect to Second Amendment rights.

Having thus complied with 11 C.F.R. Section 114.4(5), neither the E-Mail Alert nor the Voter Guide, nor the two taken together, constituted an “in-kind contribution” to any candidate or candidate’s committee. See 11 C.F.R. Sections 100.52(d) and 100.81. While the E-Mail Alert alerted readers to important developments, and, although the impending election was one of those items, there was not a word about a single specific candidate and there was not a call to action of any kind. Thus, there is no reasonable possibility that the alert constituted express advocacy. The Voter Guide rated candidates with respect to each issue, but did not rate them overall and contained no call to action whatsoever. It would furnish no reasonable basis for being considered an independent expenditure or in-kind contribution as alleged in the complaint.

Compliance with FEC Campaign Guide

The complaint merely recites conclusory allegations, and, aside from its selected excerpts to page 31 of the FEC Campaign Guide, does not even attempt to argue why its allegations would be considered reasonable or correct. For example, it does not refer to any language in either the GOA E-Mail Alert or pages of the Voter Guide that allegedly would constitute express advocacy. At least one good reason for that omission may be the total absence of any language in any of the GOA items in question that reasonably could be considered “express advocacy.” In amplification of the arguments set forth above, however, we would submit the following as further evidence that the complaint should be dismissed

Quoting selected language from page 31 of this Campaign Guide — specifically, “words urging action with respect to candidates associated with a particular issue” — the

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complaint ignored the rest of the language of that particular paragraph, which reads “when accompanied by names or photographs of candidates identified as either supporting or opposing the issue ” While the E-Mail Alert certainly urged readers to look at the GOA voter guide, it did not contain any language urging voting for or against any identified candidates

Compliance with Applicable Case Law

Nothing in GOA’s E-Mail Alert or its Voters Guide constituted express advocacy, as that term is defined and applied in Buckley v. Valeo, 424 U.S. 1 (1976), or as interpreted and confirmed by a majority of federal courts ruling on the question. Indeed, as the FEC is well aware, only the first “prong” — set forth in 11 C F R §100 22(a) — of its two-pronged definitional approach to express advocacy has gained hold in the federal courts. The so-called definition in 11 C F.R. §100 22(b) has been expressly ruled invalid or unconstitutional by four federal courts. (See FEC’s Campaign Guide for Corporations and Labor Organizations, p. 31, fn. 4) See also Iowa Right to Life Comm v. Williams, 187 F.3d 963 (8th Cir 1999); Virginia Society for Human Life v. FEC, 263 F 3d 379 (4th Cir. 2001); Maine Right to Life Committee, Inc v. FEC, 98 F. 3d 1 (1st Cir 1996) ¹

Even without regard to the overwhelming weight of authority demanding explicit words in order to meet the test of express advocacy, including authority in the federal courts of Virginia where GOA is headquartered and operates, the items in question would pass muster under the second prong of the FEC’s regulatory tests.

¹ In addition, the United States Court of Appeals for the Fifth Circuit has agreed that the regulatory approach set forth in 11 C F R. §100.22(b) is too vague. See Chamber of Commerce v. Moore, 288 F 3d 187, 194 (5th Cir. 2002).

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Conclusion

The respondent, Gun Owners of America, Inc , respectfully requests the dismissal of the complaint We look forward to hearing from you

Sincerely yours,



William J Olson

WJO:mm
Enclosure

cc. Lawrence D. Pratt, Executive Director
Gun Owners of America, Inc

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FEDERAL ELECTION COMMISSION
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Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
Please use *one* form for each Respondent/Client
FAX (202) 219-3923

MUR # 5874

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The above-named individual and/or firm is hereby designated as my
counsel and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission.

11/27/06
Date

Lawrence D. Smith
Respondent/ Client Signature

Executive Director
Title

Gun Owners of America, Inc

RESPONDENT/CLIENT
(Please Print)

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Information is being sought as part of an investigation being conducted by the Federal Election
Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section
prohibits making public any investigation conducted by the Federal Election Commission without
the express written consent of the person under investigation

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